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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPEAL NO. 73 OF 2007

The Commissioner of Customs (General).. Appellant

Versus

M/s. M.D. Sadrani .. Respondent

Mr. P.S. Jetly with Mr. R.C. Master and Mr. S.D. Bhosale for Appellant.

Mr. Prakash Shah with Mr. Jitu Motwani i/by PDS Legal for Respondents.

CORAM: F.I. REBELLO &
J.P. DEVADHAR, JJ.
DATED: SEPTEMBER 06, 2007

P.C.:

. Admit.

. The appellants had framed questions of law which arise in this appeal in Para 4 of the Appeal Memo. To consider the controversy, it may be necessary to set out some facts. The Petitioners are the holders of CHA licence. The proceedings were initiated for revocation of the licence on the ground that the respondents herein had permitted the licence to be used contrary to the terms of the licence. The appropriate authority on considering the various contentions by order dated 12.9.2006 held that the charges against the Petitioners were proved and consequently ordered revocation of the licence.

. The respondents, aggrieved by the said order preferred an appeal before the appellate authority. In the meantime, the proceedings had been initiated by the Customs Collectorate at Tuticorin. By order of 14.9.2006 the importer therein was found guilty of the charges under the provisions of Section 28 of the Customs Act. In so far as respondents herein was concerned, a finding was recorded that respondents were not liable for forgery or producing fraudulent documents. When appeal came up for hearing before the tribunal, the tribunal found that, the order dated 14.9.2006 will have to be considered and in the light of that set aside the order dated 12.9.2006 and remanded the matter back for a fresh adjudication by the impugned order dated 5.12.2006. That order is the subject matter of the present appeal.

. It is not necessary for us to enter into the various controversies. The question is whether the impugned order of the tribunal can be supported in law.

. The tribunal in Para 2 has merely proceeded on the finding recorded by the Commissioner of Customs, Tuticorin. The proceedings before the authorities in Tuticorin was in the matter of forgery and

fabrication of documents, whereas in the instant case allowing the licence to be misused. While ordering remand, the Appellate authority ought to have addressed itself to the question whether that finding in the proceedings at Tuticorin is relevant for the purpose of proceedings which were before it. If that was so, and if it was otherwise not possible to proceed with the proceedings, the tribunal could have passed the order as passed. In our opinion, no such finding had been recorded and consequently the impugned order is liable to be set aside and the matter remanded back to the tribunal for hearing the appeal afresh on all contentions available to the parties and decide the same according to law.

. Considering the controversy, the tribunal to decide the appeal not latter than four months from today. Appeal disposed of accordingly.

(J.P. DEVADHAR, J.) **(F.I.REBELLO, J.)**